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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 ARTHUR McKINNON, *et al.*,

9 Plaintiffs,

10 v.

11 WASHINGTON DEPARTMENT OF
CORRECTIONS, *et al.*,

12 Defendants.
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Case No. C21-5097-BHS-MLP

ORDER DENYING PLAINTIFFS'
MOTION FOR APPOINTMENT OF
COUNSEL AND STRIKING MOTION
FOR EXTENSION OF TIME

14 This is a civil rights action proceeding under 42 U.S.C. § 1983. This matter comes before
15 the Court on Plaintiffs' motion for appointment of counsel. (Dkt. # 26.) The motion was signed
16 by both Plaintiffs Arthur and Elise McKinnon and is therefore properly before the Court for
17 consideration. The Court has also received a motion for extension of time which was signed by
18 only Mr. McKinnon. (Dkt. # 27.) Because that motion was not also signed by Ms. McKinnon, it
19 is procedurally defective and not properly before the Court for consideration. *See* Fed. R. Civ. P.
20 11(a) ("Every pleading, written motion, and other paper must be signed . . . by a party personally
21 if the party is unrepresented.").

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1 With respect to the motion for appointment of counsel, Plaintiffs are advised that there is
2 no right to have counsel appointed in cases brought under 42 U.S.C. § 1983. Although the Court,
3 under 28 U.S.C. § 1915(e)(1), can request counsel to represent a party proceeding *in forma*
4 *pauperis*, the Court may do so only in exceptional circumstances. *Wilborn v. Escalderon*, 789
5 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984);
6 *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances
7 requires an evaluation of both the likelihood of success on the merits and the ability of the
8 plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved.
9 *Wilborn*, 789 F.2d at 1331.

10 Plaintiffs argue in support of their motion for appointment of counsel that they are unable
11 to afford counsel, that Mr. McKinnon's imprisonment and separation from his co-Plaintiff will
12 greatly limit their ability to litigate this action, that the issues involved in this case are complex
13 and will require significant research and investigation, that Mr. McKinnon has limited access to
14 the law library and both Plaintiffs have limited knowledge of the law, and that counsel would be
15 better able to present evidence and cross-examine witnesses at trial. (Dkt. # 26 at 1.)

16 The fact that Plaintiffs cannot afford counsel and that Mr. McKinnon is imprisoned are
17 not exceptional circumstances sufficient to warrant the appointment of counsel. The record
18 before this Court also belies the assertion that this action is too complex for Plaintiffs to litigate
19 without assistance. Plaintiffs presents relatively straightforward claims alleging that Defendants
20 Wayman and Wilkinson violated Plaintiffs' federal constitutional rights when they retaliated
21 against Plaintiffs and when they improperly rejected correspondence and confiscated photos
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1 from Plaintiffs' email accounts. (*See* dkt. # 12.) Plaintiffs' claims are limited in scope, and they
2 have demonstrated ample ability to articulate the legal and factual bases of their claims without
3 the assistance of counsel.

4 To the extent Plaintiffs complain about restrictions on law library access, they have
5 likewise not identified an exceptional circumstance sufficient to justify appointment of counsel.
6 Plaintiffs claim that Mr. McKinnon has had no access to the law library during the past two
7 months because of COVID-19 restrictions, and that he is likely to have only limited law library
8 access once the restrictions are lifted. (Dkt. # 26 at 1.) Defendants, in response to Plaintiffs'
9 motion, note that the facility where Mr. McKinnon is confined came off of COVID-19 outbreak
10 status on March 2, 2022 and, thus, the law library is now fully operational. (*See* dkt. ## 29 at 3,
11 30 at ¶ 4.) The Court observes as well that Ms. McKinnon is not incarcerated and should have
12 the ability to access a law library without encountering the same types of restrictions imposed
13 upon Mr. McKinnon by virtue of his incarceration. If Plaintiffs find themselves unable to comply
14 with specific Court imposed deadlines because of issues related to law library access or to the
15 fact that they are separated geographically, they may seek relief from such deadlines by filing an
16 appropriate, and properly executed, motion with the Court.

17 With respect to Plaintiffs' assertion that counsel would be better able to present evidence
18 and cross-examine witnesses at trial the argument is, at best, premature. The record is not yet
19 sufficiently developed for the Court to make a determination as to whether this action is likely to
20 proceed to trial or whether Plaintiffs are likely to succeed on the merits of their claims. Based on
21 the information available to the Court at this juncture, this Court must conclude that Plaintiffs

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1 have not demonstrated that their case involves exceptional circumstances which warrant the
2 appointment of counsel.

3 Based on the foregoing, the Court hereby ORDERS as follows:

4 (1) Plaintiffs' motion for appointment of counsel (dkt. # 26) is DENIED.

5 (2) Plaintiff Arthur McKinnon's motion for extension of time (dkt. # 27) is
6 STRICKEN.

7 (3) The Clerk is further directed to send copies of this Order to Plaintiffs, to counsel
8 for Defendants, and to the Honorable Benjamin H. Settle.

9 DATED this 30th day of March, 2022.

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12 MICHELLE L. PETERSON
13 United States Magistrate Judge
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